United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1104

B/S

United States Court of Appeals

For the Second Circuit.

SILVER CHRYSLER PLYMOUTH, Inc.,
Plaintiff-Appellee,

against

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,
Defendants-Appellants.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

BRIEF OF PLAINTIFF-APPELLEE.

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THE BOOKCRAFTERS COMPANY, INC., New York, N. Y. 10007—212 732-6978—1974

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BRIEF OF PLAINTIFF-APPELLEE.

Issues on Appeal.

1. Was Judge Weinstein's order, denying defendants-appellants' motion to disqualify the firm of Hammond & Schreiber* from representing plaintiff-appellee in this action, within the broad discretion conferred upon district judges in ruling upon a motion to disqualify counsel grounded on an asserted violation of the Code of Professional Responsibility?

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*On April 1, 1974, Hammond & Schreiber, P.C., a professional corporation, succeeded to the practice of Hammond & Schreiber, a partnership. For convenience, plaintiff-appellee's counsel will be referred to merely as Hammond & Schreiber.

2. Did Judge Weinstein act within his discretion in finding that the present action bears no substantial relationship to any matter upon which Schreiber (a member of the firm of Hammond & Schreiber) worked as a young associate at the firm that represents defendants-appellants for less than three years, and therefore in denying defendants-appellants' motion to disqualify the firm of Hammond & Schreiber?

Statement of the Case.

A. Pertinent Proceedings to Date.

(1) *District Court*

On June 12, 1973, plaintiff-appellee, Silver Chrysler Plymouth, Inc. ("Silver"), a franchised Chrysler-Plymouth automobile dealer in Port Jefferson Station, Long Island, New York, filed a six-page complaint in this action. In sum, Silver alleged that defendants-appellants Chrysler Motors Corporation ("Motors") and Chrysler Realty Corporation ("Realty") (both sometimes referred to, with their parent Chrysler Corporation, as "Chrysler") have breached a standard form Dealer Relocation Agreement, which it is alleged, provides for a twenty-five year lease of certain facilities, and have violated the Automobile Dealer Franchise Act (15 U. S. C. §§ 1221-25) by coercing Silver to relinquish the benefits of its Dealer Relocation Agreement. Silver, who has been paying under protest a higher rent than provided by its Dealer Relocation Agreement, seeks declaratory, injunctive and monetary relief. This "simple case," as Judge Weinstein characterized it below (505a), is in essence a dispute over the amount of rent owing by a tenant to its landlord.

After service of process was effected on Chrysler on or about June 18, 1973, Chrysler sought and obtained a stipulation extending its time to answer or move with respect to the complaint from July 9, 1973 to August 9, 1973. On June 29, 1973, Silver served a short set of interrogatories. Chrysler sought and obtained a stipulation to extend its time to answer or object to these interrogatories from August 2, 1973 to August 23, 1973. On August 6, 1973, Chrysler sought but did not receive a further extension of its time to answer or move with respect to the complaint.

On August 8, 1973, Chrysler moved *ex parte* for a further extension of time to answer or move with respect to the complaint. Judge Weinstein signed an order to that effect. On August 9, 1973, after receiving a copy of Judge Weinstein's order, Silver's counsel moved to vacate Judge Weinstein's order on the grounds that it was obtained without a hearing on an affidavit that contained "inaccurate statements of fact and [omitted] certain material facts" (Hammond Aff., 8/9/73, p. 1).

On August 9, 1973, after hearing counsel, Judge Weinstein entered an order requiring Chrysler to answer Silver's interrogatories by September 6, 1973 and orally advised Chrysler's counsel to have any motion addressed to the complaint returnable on the same date. A pretrial conference was set for September 26, 1973. At no time did Chrysler disclose to either Judge Weinstein or Silver's counsel that it intended to seek a disqualification of Silver's counsel.

On August 26, 1973, Chrysler served a motion to disqualify Silver's counsel (seeking, as well, related injunctive relief) and to dismiss the complaint on the ground that the standard form Dealer Relocation Agreement of Chrysler executed by the parties failed to comply with

the statute of frauds. Silver's counsel agreed to defer consideration of Chrysler's motion to dismiss until Judge Weinstein ruled on Chrysler's motion to disqualify Silver's counsel.

On September 18, 1973, Judge Weinstein heard the parties at a lengthy oral argument. He granted both sides leave to submit all additional papers that they thought advisable. Lengthy post-argument affidavits and memoranda were submitted.

On November 27, 1973, Judge Weinstein filed a 27-page opinion dated November 26, 1973, in which he denied Chrysler's motion in all respects. This opinion is reported at 370 F. Supp. 581. On December 11, 1973, Chrsyler moved to have Judge Weinstein, among other things, amend his order denying Chrysler's motion to certify an appeal pursuant to 28 U. S. C. §1292(b). By memorandum filed on December 19, 1973, Judge Weinstein denied Chrysler's motion in all respects.

(2) *Court of Appeals*

On December 21, 1973, Chrysler filed its notice of appeal and its petition to compel Judge Weinstein to certify an appeal pursuant to 28 U. S. C. §1292(b). Its petition was denied by order dated January 10, 1973 (Kaufman, Ch. J., Smith, Feinberg, CJJ.). On January 2, 1974, Chrysler served a motion to stay proceedings below, pending disposition of its attempt to appeal Judge Weinstein's order.

On January 9, 1974, Silver filed a motion to dismiss Chrysler's appeal for lack of jurisdiction. At a hearing on January 15, 1974, before Judges Friendly, Moore, and Anderson, Chrysler's motion for a stay was granted pending a determination of the jurisdictional issue and

the parties were directed to file further briefs. On January 23, 1974, Chrysler filed a petition for mandamus, which was consolidated with the motion to dismiss by order dated January 24, 1974. By order dated April 8, 1974, the motion to dismiss was ordered to be determined *en banc*. On April 25, 1974, an *en banc* opinion was filed denying Silver's motion to dismiss Chrysler's appeal and the petition for mandamus was dismissed as moot.

(3) *Papers Submitted Below on Chrysler's Motion to Disqualify Counsel*

Chrysler sought to disqualify the firm of Hammond & Schreiber from representing Silver on the grounds that Dale A. Schreiber, Esq., the junior member of the firm of Hammond & Schreiber, had worked on some cases involving one of the two Chrysler defendants in this action while an associate of the Kelley Drye firm for less than three years ending in February, 1969, almost five years ago.

Chrysler's evidence on the motion consisted of three affidavits of Robert Ehrenbard, Esq., a partner of the Kelley Drye firm (28-38a, 100-132a, 448-465a). His first affidavit consisted almost completely of vague generalities about alleged work Schreiber had done while an associate at Kelley Drye (28-38a).

Silver's papers in opposition consisted of three affidavits from Schreiber (54-71a, 428-445a, 487-489a), two affidavits from his partner Alexander Hammond, Esq. (80-89a, 446-447a), separate affidavits from two former Kelley Drye associates (73-76a, 77-79a), and eleven affidavits from Chrysler dealers (98-99a). The substance of the Schreiber affidavits was dealt with in Judge Weinstein's opinion. The affidavits from the two former Kel-

ley Drye associates—each of whom had responsible positions and had clerked for federal judges—refuted the vague charges and innuendos in the first Ehrenbard affidavit that Schreiber had allegedly worked on certain specific cases. The second and third Ehrenbard affidavits did not take issue with the substance of the affidavits of these two ex-Kelley Drye associates. The first Hammond affidavit recited how Hammond, many years before he met Schreiber, had specialized in representing automobile dealers and had, in testifying before a Congressional committee, been sharply critical of Chrysler's dealer practices (84a). Moreover, Hammond's affidavit recites incidents that, Silver submits, show that the real objective of Chrysler in claiming Schreiber's disqualification was to remove Hammond, whose expertise in dealer law and knowledge of the business Chrysler feared, from all representation of Chrysler dealers (84-85a). However, Judge Weinstein refrained from considering Chrysler's motives in this regard.

(4) *Judge Weinstein's Opinion Below*

While Chrysler has attempted to characterize Judge Weinstein's opinion as a radical departure from existing law, a careful reading will show that he found, in concrete and specific terms, disqualification to be inappropriate under this Court's recent decision in *Emle Industries, Inc., v. Patentex, Inc.*, 478 F. 2d 562 (2d Cir. 1973).

After quoting the standard for proof of disqualification laid down in the *Emle* case, Judge Weinstein proceeded to make findings of fact that showed that Schreiber had not worked on matters while at Kelley Drye that, in the words of *Emle*, were "substantially related to the matters" involved in the present case (497-500a). He rejected Chrysler's broad assertion that the knowledge, if any, of Kelley Drye partners that might be con-

ceivably helpful to Silver in this case was "irrebuttably presumed" to have been passed to Schreiber (500-501a). Judge Weinstein found that, on the basis of work done by Schreiber at Kelley Drye, there was no basis, under the *Emle* standard, to impute knowledge of any such information to Schreiber (500-501a). Finally, Judge Weinstein found that Schreiber had no "actual knowledge" of any confidential information that would be useful to Silver in this action (501-502a).

B. Statement of Facts.

(1) *Schreiber's Relationship With the Kelley Drye Firm*

After graduating from Columbia Law School in June, 1965, Dale A. Schreiber, Esq., went to work in August, 1965, before his admission to the bar, as an associate of the law firm of Kelley Drye Newhall Maginnes & Warren, predecessor to defendants' counsel, Kelley Drye Warren Clark Carr & Ellis (both hereinafter referred to as "Kelley Drye"), at an annual salary of $7,800. In late fall of 1965, he left Kelley Drye without being guaranteed re-employment and took a position as a law clerk to Hon. Marvin E. Frankel, United States District Judge for the Southern District of New York (56a).

In September, 1966, Schreiber returned to Kelley Drye, as an associate, at an annual salary of less than $10,000. For a period of time, he continued doing basically legal research typically done by young associates in large New York City law firms. Gradually, he started to do work for litigation partners in the firm. As will be shown below, some of the matters involved one of the defendants in this action, Chrysler Motors; many other substantial matters were unrelated to any of the Chrysler companies (56a).

In February, 1969, after less than three year's employment at Kelley Drye, Schreiber left the firm and established his own practice in White Plains, New York. His practice there primarily involved negligence cases. He did not represent, and lacked the expertise to represent, automobile dealers (57a).

In the fall of 1969, Schreiber met his present partner, Alexander Hammond, Esq., who was many years his senior and had a national reputation for his representation of automobile dealers (87a, 66a). They had not previously met or communicated (66a). In August, 1970, Hammond invited Schreiber to form a firm under the name of Hammond & Schreiber (57a, 66a). Hammond secured Schreiber's services to aid him in litigating many matters that were overburdening him. He neither needed, nor could Schreiber offer, any information about the Chrysler companies that would aid Hammond's representation of dealers (87a, 57a).

(2) *Hammond's Unique Role in Representing Automobile Dealers*

Following his graduation from Columbia Law School in 1939, Hammond's time was divided between practicing law and the automobile business (82a). In 1961, long before he first met Schreiber, Hammond began representing franchised dealers, and particularly automobile dealers (81-84a). By 1968, he had achieved a national reputation, as an effective and informed advocate for automobile dealers in their relations with automobile manufacturers (84a). He was one of the first lawyers in the country to have success in litigating for dealers under the Federal Dealers' Day in Court Act enacted in 1956 (15 U. S. C. §§1221-1225) (83a). Hammond has many times testified before Congressional committees and the Federal Trade Commission on behalf of automobile

dealer interests and was particularly critical of Chrysler's retail sales activities in competition with its dealers in testimony given in 1969 to a Senate subcommittee (84a).

Since 1968, Hammond has chaired the Practising Law Institute's annual program on automobile dealer problems (81a, 83a). He has served prior to his partnership with Schreiber as counsel to various dealer groups, including one consisting of some dealers of defendant Chrysler Motors (84a, 98-99a).

In 1966, Hammond instituted an action on behalf of three former DeSoto dealers against Chrysler for violation of the Robinson-Patman Act and for breach of contract (87a, 74-75a). This action was settled in November, 1969, long after Schreiber left Kelley Drye and almost a year before the commencement of his partnership with Schreiber in August, 1970 (74-75a, 87a). The record shows that Schreiber did not meet or communicate with Hammond while Schreiber was associated with Kelley Drye (87a, 75a).

(3) *Chrysler and the Kelley Drye Firm*

The Kelley Drye firm is one of the larger New York City law firms with about 80 lawyers, consisting of about 30 partners and 50 associates (497a). As most large firms, it experiences a high rate of turnover of associates. It is estimated that since 1965, Kelley Drye has probably employed at various times over two hundred different lawyers (497a).

Chrysler is the fifth largest industrial corporation in the United States and one of the three major domestic automobile manufacturers (431-432a, 154a). In 1967, Chrysler's sales were over $6 billion, its profits were

over $200 million, and it had over 215,907 employees (Ehrenbard Aff., 9/17/73, Ex. R (Chrysler 1967 Annual Report [Annual Report], p. 1). Chrysler had over twelve subsidiaries engaged in many activities through 17 divisions (Annual Report, esp. pp. 38-39). In 1967, Chrysler had 6,324 automobile dealers, who constituted about 20% of all domestic automobile dealers in the United States (Annual Report, p. 10; 431-432a).

The Kelley Drye firm is one of the many larger law firms throughout the United States that has represented one or more of the Chrysler companies (85-86a). It has not been claimed that Kelley Drye is general counsel to Chrysler.* It is estimated that the number of lawyers associated with, and members of, law firms representing Chrysler interests in the United States in recent years runs into the many thousands (85-86a). Chrysler admitted that firms other than Kelley Drye handled dealer litigation for Chrysler (454a).

(4) *Plaintiff's Retention of Hammond & Schreiber*

On June 12, 1973, over four years after Schreiber left Kelley Drye, the present action was filed on behalf of Silver. Silver's principal, Frank Silver, sought representation by Alexander Hammond, Esq., in this action, due to his reputation and representation of a group of Chrysler dealers and their prior acquaintance, which dates back to 1958. In 1969, Hammond purchased a car from Mr. Silver's dealership. Mr. Silver did not seek the employment of Schreiber and had not ever met him until after he sought to retain the firm of Hammond & Schreiber for this action (88a).

*Chrysler's emphasis on Kelley Drye's status as "counsel" (DB25) is curiously inconsistent with its position that the difference in status between partners of large law firms and young associates is irrelevant (DB23).

(5) *The Present Action*

The complaint in the present action (5-10a) charges that defendant-appellant Chrysler Motors Corporation ("Motors") entered into a standard form Dealer Relocation Agreement with Silver in January, 1967. The agreement provided that Motors would erect a dealership facility for Silver and Silver agreed to occupy the facility at a rental computed under a certain formula. Before the facility was completed, Motors apparently transferred its real estate operations to defendant-appellant Chrysler Realty Corporation ("Realty"). In 1968, after the facility was substantially completed, Silver occupied it. Realty asked Silver to sign a new form lease agreement. However, after reading it, Mr. Silver discovered the lease was only for a five-year term, whereas the Dealer Relocation Agreement, as it read and as it was represented to him by Motors, was for a twenty-five year period. Mr. Silver was told that this lease form was merely a working document under the Dealer Relocation Agreement, which remained in force. The five year lease expired on May 31, 1973. Prior and subsequent to this date, Realty threatened Silver with eviction unless he signed a new lease at a higher rental. After refusing to sign the new lease, Silver brought this action. Since June 1, 1973, Silver has paid the higher rent under protest (5-10a).

By this action, Silver seeks declaratory, injunctive and monetary relief that will in effect give it the benefits of the Dealer Relocation Agreement.

Silver's complaint proceeds on three theories. The first two, grounded on diversity and pendent jurisdiction, are essentially based upon breach of the Dealer Relocation Agreement by Motors and Realty. The third, based on the Dealer's Day in Court Act, alleges that Motors

and Realty have coerced Silver into relinquishing the benefits of its Dealer Relocation Agreement.

Motors and Realty have yet to answer the complaint. In a motion to dismiss the complaint for failure to state a claim for relief, Motors and Realty have contended in substance that their standard form Dealer Relocation Agreement does not satisfy the statute of frauds (36-38a). Silver has filed papers in opposition, but Judge Weinstein has stayed decision on the motion until disposition of this appeal (507a).

At least two actions, similar to this action, were brought by dealers in various parts of the United States against Chrysler prior to the institution of the present action but well after Schreiber left Kelley Drye (370-378a, 32a, 72a). One received coverage in *Automotive News*, a leading automotive industry trade publication (72a). Thus, the present action, as is apparent from its very nature, is not founded on confidential information.

(6) *Work Done By Schreiber While At Kelley Drye for Chrysler and Others*

As Chrysler concedes (DB5),* Schreiber did no work for Realty, the principal defendant in this action. Realty's activities are considered by Chrysler in its 1967 Annual Report to be so significantly different from either Chrysler's or Motor's that Realty is excluded from Chrysler's consolidated annual report (Annual Report, p. 29). Indeed, Chrysler has not contended that, during Schreiber's tenure at Kelley Drye, any partner or associate of Kelley Drye had the remotest contact with any form of Dealer Relocation Agreement. Schreiber submitted, without contradiction, below that "prior to [his firm's] retention [in this action], [he] had never seen or even heard of a

*"DB" refers to Chrysler's main brief on this appeal.

Dealer Relocation Agreement and had never seen a Chrysler dealer lease" (55a). It appears that the Dealer Relocation Agreement involved in this action was drafted by other outside counsel or Chrysler's internal legal staff and that Chrysler's internal personnel handled the negotiations of such agreements directly with the dealers.

Contrary to the implication in Chrysler's brief, Schreiber did not spend most, or even a substantial portion, of his time at Kelley Drye on Chrysler matters. As shown below, most of his time on Chrysler matters was spent in two cases, one an antitrust case brought by another automotive manufacturer, and the other, a stockholder's derivative suit.* Although Chrysler's refusal to produce time records or compilations therefrom has prevented a determination of the proportion of time he spent on these cases, Schrieber's work for non-Chrysler clients was extensive. The almost 100 so-called massive central station protection treble damage actions, emanating from *United States v. Grinnell Corp.*, 384 U. S. 563 (1964), occupied a great deal of his time (65a). See *City of Detroit v. Grinnell Corp.*, '74 CCH Trade Cases, ¶74,986 (2d Cir. 1974). Most of his time, for many months prior to this departure from Kelley Drye in February, 1969, was spent in aiding the preparation for trial of a non-Chrysler case entitled *Fidelity & Casualty Company v. Alpha Life Insurance Company* (57a). He handled matrimonial, derivative, securities, contract, and negligence litigation for non-Chrysler clients (65a). He spent many hundred hours in the library writing research memoranda for other clients on mortgages, interstate commerce tar-

*Schreiber has denied Chrysler's implication that Schreiber worked extensively on non-litigated matters for Chrysler (DB8, 62a). Chrysler's use of such suggestive and colorful metaphors as "tip of the iceberg" (DB8) does not constitute proof and is an abuse of the presumptions formulated for use in disqualification matters.

riffs, trusts, estate taxes, community property, charitable foundations, sales of controlling interest in corporations, personal jurisdiction of New York and federal courts over defendants, the McCarren-Ferguson Act, the New York Public Service Law, tax-exempt foundations foundations, tax-free exchanges, the Uniform Commercial Code, and the Norris-LaGuardia Act (65a).

The principal case that Schreiber worked on for Chrysler was *Checker v. Chrysler*, 64 Civ. 866 (S.D.N.Y.) (62-63a). Judge Weinstein accurately described his participation as follows (498-499a):

> "In this treble damages antitrust action commenced in 1964, Checker, a manufacturer of taxi-cabs competing with Chrysler, alleged that Chrysler was conducting a predatory campaign to put Checker out of business in violation of the Sherman Act. Schreiber's participation involved successful opposition to motions for summary judgment and a preliminary injunction.
>
> "Checker claimed that Chrysler gave cash rebates to all purchasers of taxi-cabs from Chrysler dealers as part of an illegal price fixing agreement. In denying Checker's motion, the District Court found that the plan did not have a tendency to restrict the pricing independence of dealers who remained free to determine ultimate retail sales price. At most, this case would have permitted exploration of the pricing arrangements between manufacturer and dealer. There is no substantial relation which can be reasonably established between the issues involved in the *Checker* case and the matters embraced by the current action."

The other principal Chrysler case Schreiber worked on was a stockholder derivative case entitled *Ezzes v. Ackerman* commenced by a Chrysler shareholder in the Chancery Court of Delaware, while Schreiber was not associ-

ated with the firm (63a). The Chancery Court dismissed the complaint on the grounds of *res adjudicata* and release (63a). Schreiber assisted writing briefs on the plaintiff's appeal and a reply brief in the trial court (63a). His access to files in that case principally involved a review of suit papers in a previous case, the judgment in which defendants successfully claimed constituted a bar to the *Ezzes* action (442a).

Schreiber played a minor role in a handful of other small Chrysler cases. He settled a few warranty cases brought by disgruntled purchasers of Chrysler products, and settled one for $2,000 during trial in the Civil Court (63a). In another action entitled *Chrysler Corporation v. Toffany*, 305 F. Supp. 971 (N.D.N.Y. March 13, 1969), *rev'd*, 419 F. 2d 499 (2d Cir. Nov. 7, 1969), involving a claim that the National Traffic and Motor Vehicle Safety Act pre-empted certain New York statutes, Schreiber did legal research on the applicability of the Eleventh Amendment of the United States Constitution (63a)

Apart from the above cases, which Schreiber was able to recollect, Chrysler was able to establish that Schreiber worked on two other Chrysler matters. One was an action brought by a dealer for a breach of contract, which Judge Weinstein described as follows (498a):

> "Considerable weight must be given to the affidavit of Mr. Clark J. Gurney who was the associate most closely involved with Chrysler's dealer suits during Schreiber's tenure at the firm. Gurney affirms that to the best of his recollection Schreiber 'did not work directly or indirectly on Chrysler dealer litigation, with the possible exception of researching a few specific points of law that may have been involved in a dealer case'. The scope of the research is demonstrated by Schreiber's involvement in *Rocco Motors v. Chrysler*, Index No. 5120/1967 (N. Y. Sup. Ct. West. Co.).

> In *Rocco,* the only dealer case Schreiber recalls working on, his involvement amounted to researching a motion made to dismiss under the statute of limitations."

The *Rocco* case involved a claim for breach of contract based on Chrysler's termination of all DeSoto franchises in 1960. See generally *Buono Sales, Inc., v. Chrysler Motors Corporation,* 363 F. 2d 43 (3d Cir. 1966), in which Chrysler was represented only by New Jersey counsel.

Schreiber is alleged to have drafted an answer (209a) containing a general denial in an action entitled *Polk v. Cross & Brown* brought in the Civil Court upon an endorsed complaint.* Chrysler was not even named as a party to this action (434a). As Judge Weinstein noted (498a):

> "[D]efendants argue that Schreiber represented Chrysler real estate interests in a litigation entitled *Polk v. Cross & Brown Co.,* a suit in the Civil Court of New York City. Defendants urge, 'He thereby became familiar with some of Chrysler's practices as a landlord.' The details, however, belie any possible relation to the issues in *Polk* to the matters involved in the present action—beyond the semantic similarity that real estate was involved in both actions. *Polk* was an action brought by the Legal Aid Society seeking damages for a plaintiff (apparently a welfare client) who claimed he had been wrongfully evicted from the Circle Hotel. The hotel was then owned by a Chrysler subsidiary, Chrysler Manhattan. Schreiber declares that his only recollection of involvement with the case 'is that I was sent down to adjourn a mo-

*Chrysler has conveniently omitted the endorsed complaint, although it has insisted upon an extensive and unnecessarily lengthy appendix. See *Consolidated Theatres v. Warner Bros.,* 216 F. 2d 920, 928 (2d Cir. 1954) (on motion to recall mandate). A copy of the endorsed complaint is attached to this brief.

> tion or hearing on this case.' Defendants state that Schreiber drafted the answer in this action. Whatever the extent of Schreiber's involvement, the remoteness of the facts and issues of *Polk* to matters raised by the present action is striking."

(7) *Cases Which Chrysler Erroneously Claimed Schreiber "Worked On" or "Was Involved In"*

In attempting to substantiate its erroneous factual thesis that Schreiber allegedly represented "a broad spectrum of Chrysler interests while at" Kelley Drye (129-130a), Chrysler asserted below, as it has here, that Schreiber allegedly "worked on" or was "involved in" several other so-called "dealer" or "real estate" cases.

However, after Chrysler identified these cases, in reply papers below, Schreiber denied having worked on these cases in any meaningful sense (433-436a). Schreiber submitted the affidavits of two ex-Kelley Drye associates, Clark Gurney, Esq. (73-76a) and Hugh Baum, Esq. (77-79a), both of whom are responsible attorneys and who clerked for federal judges, which unequivocally supported Schreiber's assertions. Indeed, Schreiber asserted, without contradiction, that, in none of these cases, which were "handled by other" Kelley Drye attorneys, did he "read the files, interview witnesses or client personnel, or participate in the drafting of papers" (432a). In any event, none of these cases involved matters related to the present case. The particular cases that Schreiber denied having a meaningful role, if any, are discussed below:

(a) *Bayside Motors, Inc., v. Chrysler,* 61 Civ. 1094 (S.D.N.Y.): Chrysler alleged that Schreiber was "involved in" this case, while refusing to state specifically or generally what he had done or how much time he had spent (120a). This action was brought almost five years be-

fore Schreiber joined Kelley Drye (241a). Schreiber denies working on this case, having read the file, or, prior to the motion below, ever having read the complaint in this case (435a). Chrysler did not deny Schreiber's version, although it had ample opportunity (456-457a). Nor did Chrysler deny Schreiber's statement that his sole contact with this case was limited merely to adjourning a motion or calling a motion "ready" in the old motion part of the Southern District (435a). As Chrysler's description indicates (DB9), *Bayside,* which involved claims of price discrimination, has no relationship to the present case.

(b) *DiCarlo v. Chrysler Motors Corporation,* 68 Civ. 163 (S.D.N.Y.): Although below Chrysler appeared to consider that Schreiber did not work on this case (123-124a), Chrysler now appears to contend that he did (DB35). However, as the Gurney affidavit indicates (75-79a), Mr. Gurney, who was the principal Kelley Drye associate working on dealer cases (73-74a), drafted practically all papers in opposition to the plaintiff's motion for a preliminary injunction, deposed the plaintiff at length and conducted further discovery (75a). Mr. Gurney asserted flatly, without contradiction by Chrysler, that Schreiber "did not participate in the handling of the action or the drafting of papers" (75a).* Mr. Gurney states that Schreiber's limited contact with this case was his brief inspection, at Mr. Gurney's request, of the corporate plaintiff's income tax return (76a). In any event, *DiCarlo,* which sought specific performance of an undertaking by Chrysler to issue a permanent franchise, has no relationship to the present case (293-301a). No lease

*For example, Chrysler alleges broadly that "Gurney sought Schreiber's assistance" in this case (DB7). However, a reading of Gurney's affidavit belies Chrysler's innuendo.

or landlord tenant relationship with Chrysler existed, or was in issue.

(c) *Long Island Motors, Inc. v. Chrysler Motors Corporation,* 66 Civ. 3660 (S.D.N.Y.): Chrysler claimed below that Schreiber "was involved in" this action, brought by Hammond in 1966, on behalf of three former DeSoto dealers (120a). Schreiber denied having worked on this case (435a) and was supported fully by Mr. Gurney who had handled this case (74-75a). Mr. Gurney asserted, without contradiction from Chrysler, that "Schreiber took no part in the defense of this suit; nor did he ever meet Mr. Hammond during the course of the case" (75a). Indeed, Schreiber and Hammond stated, without contradiction, that they had not met until the fall of 1969, more than six months after Schreiber left Kelley Drye (87a, 66a, 437a). Chrysler has refused to state what, if anything, Schreiber allegedly did in connection with this case (120a). In any event, *Long Island Motors,* which involved alleged Robinson-Patman Act violations and the discontinuance of the DeSoto line in 1960, has no relationship to the present case (254-270a).

(d) *Chrysler Motors Corporation v. Estree Company, et al.,* Index No. 12419/1967 (Sup. Ct. West. Co.): Chrysler also claimed that Schreiber "was involved in" this case, which was brought by Motors to enforce an option to purchase real estate (271-274a, 121a). Schreiber denied having worked on this case (64a, 433a). Schreiber's assertion is supported categorically by Hugh M. Baum, Esq., the former Kelley Drye associate who worked on this case (77-79a). Mr. Baum, after describing how different the *Estree* case was from the present case, states as follows (78-79a):

> "I did most of the drafting of the complaint and the papers filed in the *Estree* case. Although

> I was under the overall supervision of Mr. Ehrenhard, on this case, I worked primarily under Richard J. Concannon, Esq., then an associate and later a partner of Kelley Drye. I spent many hundred hours working on this case, including negotiations. With Mr. Concannon, I also spent many hours in settlement negotiations with Estree's attorney. At no time did Mr. Schreiber participate in the drafting of any papers in the case or even any internal memorandum relating to it or in negotiations. It is possible that over the extended period of time I was working on the *Estree* case that I may have asked Mr. Schreiber about a minor procedural matter, although at this time I have no recollection of ever having consulted him about this case."

Mr. Baum's account was not contradicted by Chrysler, which refused to state what, if anything, Schreiber allegedly did in this case (121a). In any event, the *Estree* case, which involved an issue of the proper exercise of an option, is not substantially related to the present action.

The Gurney affidavit dealt a fatal blow to the Chrysler thesis that Schreiber was meaningfully involved in, or had acquired any information about, Chrysler's dealer litigation, to say nothing of its overall dealer policy. As Judge Weinstein stated (498a):

> "Considerable weight must be given to the affidavit of Mr. Clark J. Gurney who was the associate most closely involved with Chrysler's dealer suits during Schreiber's tenure at the firm. Gurney affirms that to the best of his recollection Schreiber 'did not work directly or indirectly on Chrysler dealer litigation, with the possible exception of researching a few specific points of law that may have been involved in a dealer case.'"

(8) *The Kelley Drye Firm Structure and Chrysler's Charge That Schreiber Had Access to Chrysler Confidences*

The initial part of Chrysler's statement of "facts" (DB5-8) attempts through the use of characterization, vague abstractions, and ultimately distortions, to show that Schreiber and presumably any former Kelley Drye associate, even of Schreiber's short tenure, automatically became imbued with so-called Chrysler confidences that may have been somewhere in Kelley Drye's files. Judge Weinstein thought Chrysler's efforts in this regard most fatuous, noting that Chrysler had by "[v]ague or indefinite allegations" attempted to create "factual complexities" that would cause a frustrated district judge to throw up his hands and order disqualification on some "notions of possible appearance of impropriety" (502).

The low calibre of Chrysler's so-called proof of the osmotic process on which it relies demonstrates its absurdity in this case. After reciting a catalogue of various matters in which Kelley Drye has represented Chrysler, Chrysler asserts, without support in the record, that Schreiber had "free and ready access" to "matters" going back as far as 1925, many years before he was born and 40 years before he was admitted to practice law (DB5). Chrysler also alleges that Schreiber "obtained immeasurable confidential information regarding [Chrysler's] practices, procedures, methods of operation, activities, contemplated conduct, legal problems and litigation" (DB5). However, Chrysler's record support is merely a sentence taken verbatim from an affidavit that it

submitted below (29a) and must be disregarded as totally conclusory. But taken literally, Chrysler's notion of "immeasurable confidential information" can be taken to mean that such confidential information was so small and insignificant that it thereby became "immeasurable"—a conclusion that could be reached on the record. As shown above, Chrysler attempted to claim Schreiber was "involved in" or "worked on" cases (DB6) with which he in fact had no meaningful contacts, if any. Chrysler also claims that "[p]artners and associates at [Kelley Drye] *were constantly* discussing pending cases and exchanging ideas" (DB7) (italics added), implying that every attorney in the 80-man Kelley Drye firm is therefore deeply involved in every case in the firm. As was shown above (pp. 8-9), such exaggerated claims can only be motivated by Chrysler's desire to prevent Hammond, not Schreiber, from representing Chrysler dealers.

The absurdity of the Chrsyler "osmosis" theory is vividly demonstrated by the concrete facts on the record about the structure and operation of the Kelley Drye firm. Kelley Drye in recent years has had a staff of about eighty lawyers with about 30 partners and 50 associates, together with an enormous supporting staff (497a). In 1965, the litigation department alone had about fourteen lawyers, four partners and ten associates, before Schreiber began working there (73a). The litigation department itself was so large that occasionally it had luncheon meetings to maintain some semblance of order (441a). The contacts among associates were restricted and occasional (76a, 78-79a). During Schreiber's tenure, Kelley Drye maintained a central file room consisting of several thousand square feet, crammed with rows of files, as well as outside storage space (69a). It would take several lifetimes for anyone to review even a small portion of this material. Chrysler's review of

the many Chrysler cases handled by other Kelley Drye attorneys* during Schreiber's tenure and with which Schreiber had no contact illustrates the necessarily highly compartmentalized nature of associate responsibilities at Kelley Drye (DB12-14, 123-128a). It is estimated that over 200 associates have passed through Kelley Drye since 1965 (497a).

Chrysler's attempt to create the impression that Schreiber had extensive contact with Chrysler personnel is belied by the record (DB6). Schreiber gave this uncontradicted version of these limited contacts (441-442a):

> "Retreating from the contention made in his initial affidavit that I had 'daily contacts with defendants' employees' (p. 6), Mr. Ehrenbard contends that, after all, I did speak to a few Chrysler employees (pp. 7-8). However, the few examples that he cites in reply are quite exhaustive and were probably the result of hundreds of man hours spent culling through my time sheets and correspondence files in cases I worked on. Although

*These matters have no relationship to the present case. For example, the *Buono* case involved the 1960 discontinuance by Chrysler of all DeSoto dealers (315-323a). The other dealer cases alleged wrongful preferment of other dealers (DB13). Even the real estate matters are remote from the present case. For example, *Urban*, which Chrysler as plaintiff commenced in 1964 before Schreiber's association with the firm, alleges that the defendant landowner changed the topography of a piece of land so that a dealer facility could not be built (361a). *RGR* involved a claim of $2,618, asserted in a District Court in Nassau County, for failure to maintain a building under a lease with Chrysler (368-369a). *Wicks*, in which Chrysler was again a plaintiff, sought to specifically enforce an option to purchase land (416-419a). The *Babylon* suit was filed on June 27, 1972 (three years after Schreiber left the firm) (370-378a, esp. 376a), although Chrysler attempts to create the impression that it was filed during Schreiber's tenure (DB14).

Mr. Ehrenbard spends almost an entire page referring to my contacts with Messrs. Rose, Ferris and Glenn, he does not relate the facts that would demonstrate their true significance. Messrs. Ferris and Glenn I met once. I was asked to accompany them on an appointment with a procurement department official of New York City to listen to the reasons why Chrysler lost a bid to sell automobiles to New York City. I was briefed in the taxicab on the way down to the Municipal Building. After a brief meeting the matter was closed. My contacts with Mr. Rose, a sales official at Chrysler-Manhattan, principally involved the *Abikkarm* case—a Civil Court case based on breach of a new car warranty (my first affidavit, p. 10). My principal contacts with him entailed reviewing the repair history of the plaintiff's vehicle. I also dealt with Mr. Anderson on this case only by telephone.

"With respect to my contacts with Mr. Kendall and Mr. Philip, they were all in connection with the *Ezzes* case and Mr. Ehrenbard does not claim otherwise. As my first affidavit makes clear (p. 10), my participation in this case was necessarily limited, although I spent many hours on it. My access to files at Kelley Drye on the case principally involved review of suitpapers in a previous case, which defendants proved were *res adjudicata* on the issues raised.

"With respect to Mr. Huth, I never met him, but spoke with him by telephone in connection with *Checker v. Chrysler.*

While Chrysler implies that Kelley Drye routinely divulged all client confidences to its youngest associates (DB7 8), Schreiber stated that Kelley Drye partners were vigilant not to divulge any more information to its associates than was absolutely necessary (442-443a, 55a). As Schreiber stated (443a):

"[B]oth partners of the firm, and clients as well, weigh the desirability of divulging information to

associates. There appeared to me to be a keen appreciation at Kelley Drye that the high turnover of young lawyers necessitated certain precautions in this regard."

(9) *The Hammond & Schreiber Association*

After receiving Silver's papers in opposition below, including the affidavits of two ex-Kelley Drye associates who denied Schreiber had worked on specific cases, for the first time Chrysler attempted to make something out of the fact that in December, 1969, Schreiber acted as counsel for shareholders of Checker who brought a derivative action against Checker's management (not Chrysler's) entitled *Pearlman, et al. v. Markin, et al.*, 69 Civ. 5397 (S.D.N.Y.) ("*Pearlman* action"), in which plaintiffs won an unappealed judgment (111-115a).* Hammond associated with Schreiber on an of counsel basis in this action. However, Schreiber did the bulk of the work on the case and this was the only case that they worked on together prior to the formation of the firm of Hammond & Schreiber in August, 1970 (437a, 66a).

Chrysler claimed below that Schreiber had instituted the *Pearlman* action without Chrysler's consent and that the action was founded in part on public information about Checker (not Chrysler) that Schreiber may have learned during the course of his work in the *Checker v. Chrysler* litigation (DB15-16). However, Chrysler did not deny that Kelley Drye (and Mr. Ehrenbard) had cooperated with Schreiber on discovery matters in the two cases, had learned from Schreiber evidence that was important to Chrysler's defense of the *Chrysler v. Checker* action, and had discussed coordinated tactics in the two cases (437-438a, 487-489a). Thus, although it seems clear

*Chrysler has not even suggested that *Pearlman* is related in any way to the present case.

that Chrysler's consent was not necessary, it is difficult to construe Kelley Drye's cooperation as anything other than consent.* Indeed, Chrysler could not explain below why, after instituting the *Pearlman* suit, Schreiber was invited to Kelley Drye's most important social functions, including a testimonial dinner for John W. Drye, Jr., Kelley Drye's senior partner, commemorating his fifty years with the firm (438a).

Chrysler's attempt to find sinister motives lurking in the filing dates of the *Pearlman* action and the filing of the stipulation of discontinuance in the *Long Island Motors* case founders on the record. The fact is that the *Long Island Motors* case was settled in principle long before the date on which the stipulation of discontinuance was filed by Chrysler (437a).

(10) *The So-Called "Dodge Dealer Rebellion"*

Chrysler's discussion of the so-called "Dodge Dealer Rebellion" is highly misleading (DB17-18).

Apparently, in 1966, some Dodge dealers organized a public relations campaign to articulate their grievances against Chrysler (116-117a). Although Chrysler attempts to create the contrary impression (DB17), Hammond did not represent the group of those dealers at that time

*Almost two years after Kelley Drye's cooperation with Schreiber in the *Pearlman* case began, Schreiber served subpoenas in the *Pearlman* case on General Motors, Ford and Chrysler. General Motors and Ford responded, but Chrysler through Kelley Drye resisted the subpoena on, among other grounds, that Schreiber was subject to disqualification. The Chrysler subpoena was not pressed because Ford and General Motors had supplied the necessary information. However, Schreiber's firm wrote a letter to Kelley Drye pointing out its cooperation with Schreiber. Kelley Drye admittedly refused to respond to this letter (438-439a).

(446-447a). There was only one suit brought by this group, with which neither Schreiber nor Hammond concededly had any contact (DB18). The suit brought by Hammond was on behalf of three former dealers alleging a breach of contract by reason of the discontinuance of the DeSoto line of cars by Chrysler in 1960 and who clearly had nothing to do with the group associated with the "Dodge Dealer Rebellion" (446-447a).

I.

Judge Weinstein's order refusing to disqualify Hammond & Schreiber was well within his discretion.

A. The Standard for Review.

Judge Weinstein's order, denying Chrysler's motion to disqualify Hammond & Schreiber, may be reversed only if it involved an abuse of discretion. *Greene v. Singer Company*, 461 F. 2d 242, 243 (3rd Cir.), *cert. denied*, 409 U. S. 848 (1972); *Autowest, Inc. v. Peugeot, Inc.*, 434 F. 2d 556, 568 (2d Cir. 1970). The large measure of discretion accorded the District Judge in ruling on an alleged conflict of interest of counsel was recently described in *Waters v. Western Company of North America*, 436 F. 2d 1072, 1073 (10th Cir. 1971):

> "Basically the control of attorneys in trial litigation is within the supervisory powers of the trial judge and *exercise of his discretion in such matters will not be disturbed on appeal except in the most extreme of cases.* • • • Improper surface appearances are capable of damaging the judicial function and image as well as carrying a potential for actual injury to a party. *However the discretion of the trial judge in such matters is very broad for appearances may be misleading and the overall proper administration of justice may well allow the trial judge to ignore appearance in favor*

> *of fact.* What might appear as a conflict of interest on the surface can, in fact, be no conflict at all or so insignificant as to be overcome by other circumstances." (Italics added.)

B. Relevant Canons.

Chrysler invokes Canon 4 of the Code of Professional Responsibility, which provides that "a lawyer should preserve the confidences of his clients" and Ethical Consideration, EC 4-5, which provides in relevant part:

> "A Lawyer should not use information acquired in the course of the representation of a client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes. * * * Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure."

However, there is nothing in the Code of Professional Responsibility prohibiting, without more, an attorney from representing a new client against a former client. Indeed, the Code contains admonitions to the members of the bar that

> "a basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence." Ethical Consideration, EC 1-1.

In addition, Ethical Consideration, EC 2-26, provides that "[i]n furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment.'

Especially since Chrysler's attempt to disqualify Silver's counsel is based on a vicarious imputation of knowledge of Chrysler confidences to challenged counsel, the present appeal requires a balancing of competing objectives reflected in Canons 1, 2 and 4. The public interest in maximum access to legal services must be accommodated with the public interest in maintaining client confidences. For this reason, "[e]thical problems cannot be viewed in a vacuum". *United States v. Standard Oil Company,* 136 F. Sup. 345, 363 (S.D.N.Y. 1955); *Emle Industries, Inc. v. Patentex, Inc.,* 478 F. 2d 562, 565 (2d Cir. 1973).

Since the Canons are not self-enforcing, the Courts have formulated rules for their enforcement.* The rules pertinent to the facts of this case are discussed and applied below.

C. The "Substantial Relation" Test.

(1) *The Law*

The practical problem of proving that a lawyer's subsequent employment against a former client, in the words of Ethical Consideration, EC 4-5, "might require • • • disclosure" of confidences earlier confided by the former client has been considered by the Courts. This Court has recognized, as did Judge Weinstein (496a, 498a), that the former client should not be put to proof of abuse of confidence by its former attorney by disclosing the very information claimed to be confidential. As stated recently by Chief Judge Kaufman in *Emle Industries, Inc. v. Patentex, Inc.,* 478 F. 2d 562, 570 (2d Cir. 1973):

*The full scope of the court's power to enforce the Canons has not been defined. See *City of New York v. General Motors Corporation,* 60 F.R.D. 393, 397 n. 3 (S.D.N.Y. 1973), *appeal pending,* Dkt. No. 73-2351 (2d Cir.).

"We take as our guidepost in applying the language of Canon 4 to this case the standard articulated by Judge Weinfeld in *T.C. Theatre Corp. v. Warner Bros. Pictures*, 113 F. Supp. 265 (S.D.N.Y. 1953). There the court said:

"'I hold the former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are *substantially related* to the matters or cause of action wherein the attorney previously represented him, the former client. The Court will assume that during the course of the former representation confidences were disclosed to the attorney bearing on the subject matter of the representation. It will not inquire into their nature and extent. Only in this manner can the lawyer's duty of absolute fidelity be enforced and the spirit of the rule relating to privilegd communications be maintained.'

"113 F. Supp. at 268-269 (emphasis supplied). The 'substantially related' test has been approved and followed by subsequent decisions * * *."

The "substantial relation" test creates an irrebutable presumption that challenged counsel actually received confidences in his previous representation of the client that he now opposes, "whether the lawyer did, in fact, receive confidential information during his previous employment which might be used to the client's disadvantage."* *Emle, supra*, 478 F. 2d at 571. The "substantial

*Thus, the "substantial relation" test, applied by Judge Weinstein on the basis of *Emle* and other cases, does not, as Chrysler claims, "place the burden of proof on Chrysler to show specifically that Mr. Schreiber was misusing confidential information in the pending case" (DB29). Disqualification follows automatically on the basis of an irrebuttable presumption, if Chrysler had showed, as it did not, a substantial relation between the present case and the matters Schreiber worked on at Kelley Drye. The cases cited by Chrysler (DB29-31) merely describe the preclusionary effect of the "substantial relation" test.

relation" test is a "strict prophylactic rule" that avoids "even the appearance of professional impropriety." *Ibid.*

The phrase "substantially related" has been given substance in two cases in this Circuit where the challenged attorney was not disqualified. *United States v. Standard Oil Company*, 136 F. Supp. 345 (S.D.N.Y. 1955); *Fleischer v. A.A.P., Inc.*, 163 F. Supp. 548 (S.D.N.Y. 1958), *appeal dismissed*, 264 F. 2d 515 (2d Cir.), *cert. denied*, 359 U. S. 1002 (1959). However, in the *Standard Oil* case, Chief Judge Kaufman noted that prior to his opinion there:

> "Unfortunately, the cases furnish[ed] no applicable guide as to what creates a 'substantial relationship.' * * * Guidance on this point cannot be found either in those other decisions by Courts or Ethics Committees which have dealt with the problem of representing adverse interests and the questions of confidence betrayal raised thereby. * * * In most of these cases, the link between the subject matter of the first litigation or first representation by offending counsel, and the second, adverse litigation was comparatively simple to detect. * * * There appears to be no case where the question of whether a substantial relationship existed between the former representation and the second suit presented serious factual problems. *But, clearly, the word 'substantial' must be given some restrictive content.*" (at 355-56) (Italics added.)

In the face of this rationale, Chrysler asserts that Hammond & Schreiber may not represent any dealer in any claim against any Chrysler company, irrespective of the issues or matters raised therein (DB 20). Chrysler in effect argues the qualifying term "substantial" as used in the "substantial relation" test has no meaning. However, neither the Canons nor the decisions have postulated a rule of disqualification that disqualified an attorney from ever representing anyone against

a former client. To be sure, such a rule of disqualification would, as Chrysler urges (DB 25), result in "strict prophylactic rule * * *, giving attorneys clear guidance on their ethical obligations." However, such a broad rule of disqualification has been found to be unnecessary to protect legitimate client interests and would unduly infringe on other important social interests. Accordingly, the Courts have found that the presumption arising from the "substantial relation" test constitutes a sufficiently broad prophylaxis against the possible use of confidential information and the appearance of impropriety. See *Emle, supra; Standard Oil, supra; Fleischer, supra.*

(2) *Application of the "Substantial Relation" Test*

Chrysler has not made any forthright attempt to apply the "substantial relation" test with any rigor or objectivity. Instead, Chrysler has merely resorted to broad-brush characterizations of cases that Schreiber is alleged to have worked on. Below Chrysler resorted to such labels as "dealer" and "real estate" (30-31a). Here, Chrysler has employed equally uninformative characterizations such as "Chrysler-dealer relations", "Chrysler's role as lessor of dealer premises", and "defenses against claims of oral agreements" (DB 32). Chrysler does not claim that any of these cases involved either Realty, the principal defendant in this case, or a Dealer Relocation Agreement or similar agreements, upon which Silver's claim is founded here. Chrysler's approach is analogous to the one rejected by Chief Judge Kaufman in the *Standard Oil* case (136 F. Supp. at 367):

> "[I]n preparing its case, the mere mention of the word 'petroleum' in a document caused the [complainant] to assume its relevancy to the instant case and its pertinence to the instant matter. But, it must be borne in mind that a word appearing in empty space, with no history, expresses nothing."

Such "use [of] conclusory language instead of evidentiary facts in dealing with essential features of [its] charges" does not establish a basis for disqualification under the "substantial relation" test.* *Fleischer v. A.A.P., Inc., supra,* 163 F. Supp. at 569.

In sharp contrast to Chrysler's approach, Judge Weinstein carefully analyzed the cases on which Schreiber worked at Kelley Drye and found no "substantial relation" between these cases and the present one (498-499a). His findings (on *Checker, Rocco,* and *Polk*) therefore need not be repeated. In addition, Schreiber conceded working on the *Ezzes, Abikkarram,* and *Toffany* cases (63a), which Judge Weinstein did not discuss. However, these cases were obviously so different from the present case as to require no discussion. *Abikkarram* involved a $2,000 claim for breach of a new car warranty; *Ezzes* was a stockholder's derivative suit dismissed on grounds of *res adjudicata;* and *Toffany* involved a question of preemption of New York safety regulations by federal law.

Chrysler argues that Schreiber "worked on" certain additional Chrysler cases (*DiCarlo, Bayside, Long Island Motors, Estree*), for which Schreiber denies having any responsibility. Schreiber's assertion was supported in categorical terms by two ex-Kelley Drye associates who were responsible for those cases. These cases do not aid Chrysler's position.

To begin with, these four cases have no relationship, substantial or otherwise, to the present case. *Bayside* and *Long Island Motors* involved principally claims of price discrimination in violation of the Robinson-Patman Act.

*Chrysler's conclusory claims of "substantial relation" should be compared with the careful showing found insufficient to warrant disqualification in *Standard Oil, supra,* 136 F. Supp. at 367, and sufficient in *Consolidated Theatres v. Warner Bros.,* 216 F. 2d 920, 922 (2d Cir. 1954).

DiCarlo involved a claim to compel Chrysler to issue a permanent dealer franchise agreement to the plaintiff dealer who claimed to have satisfied his undertaking to Chrysler. *Estree* was brought by Chrysler to enforce an option to purchase real estate.

Judge Weinstein properly disregarded these four cases because the record substantiated Schreiber's claim that he did not work on them (433, 435a). Schreiber's claim was supported by affidavits from the two former Kelley Drye associates who were responsible for these cases. Chrysler refused to state what work, if any, it claimed Schreiber had done on these cases. Nor did Chrysler dispute Schreiber's assertion that these cases "were handled by other attorneys in Kelley Drye's large litigation department" and that Schreiber "did not read the files, interview witnesses or client personnel, or participate in the drafting of papers in any of these cases" (432a). Schreiber's undisputed lack of actual contact with the files in these cases precludes their use as a basis for disqualification. As stated by Chief Judge Kaufman:

> "Aside from these practical problems [of the anti-social effects of disqualification], it is doubtful if the Canons of Ethics are intended to disqualify an attorney *who did not actually* come into contact with materials substantially related to the controversy at hand when he was acting as attorney for a former client now adverse to his position". (Italics added.) *United States v. Standard Oil Company, supra*, 136 F. Supp. at 364.*

To the extent Chrysler's conclusory claims that Schreiber worked on these four cases could conceivably be said to have created an issue of fact, Judge Weinstein was fully justified in resolving these claims against

*Thus, Chrysler's claim that Schreiber had "access" to Kelley Drye files—in the sense that there might have been no physical barrier—cannot aid Chrysler.

Chrysler. Chrysler refused to disclose the work Schreiber allegedly did, or the number of hours Schreiber allegedly spent, on any specific Chrysler matters. Schreiber requested Chrysler to produce pertinent time records (61a, 70a) and Chrysler refused, claiming that Schreiber's time records were confidential (103a). Taking Chrysler on its own erroneous assumption, Schreiber then requested a compilation of the number of hours spent on specific matters and other nonconfidential information derived from his time records (429-431a). This accommodation was also refused by Chrysler (452a). Chrysler did not claim, nor does it seem credible, that every one of Schreiber's time records contained confidential information. Chrysler simply refused to follow any selective course that would provide even partial disclosure consistent with its professed objective of protecting real confidences. Rather, Chrysler used its professed objective to achieve a total suppression of clearly pertinent evidence.* See *United States v. Long*, 328 F. Supp. 233 (E.D. Mo. 1971), cited by Judge Weinstein.

This Court recently recognized the discoverability of time records in *City of Detroit v. Grinnell Corp.*, '74 CCH Trade Cases, ¶74,986 at pp. 96,377-78 (2d Cir. 1974), where it mandated a disclosure of tasks actually performed by counsel and a live hearing on fees applications in class actions. It would be an ironic distortion of priorities if time records or compilations were discoverable for purposes of awarding fees, but were not dis-

*Nor did Chrysler request or offer to have Judge Weinstein review time records *in camera*, as suggested in *Consolidated Theatres v. Warner Bros.*, 216 F. 2d 920, 926 (2d Cir. 1954). Indeed, throughout the proceedings before Judge Weinstein, Chrysler sought to disclose as little information as possible, including matters of public record. For example, the affidavit supporting Chrysler's motion claimed that to identify matters of public record that Schreiber allegedly worked on "would be improper" (31a). Only after the absurdity of this position was pointed out (61-63a) did Chrysler proceed to identify these matters (120-123a).

coverable for purposes of determining whether a litigant may be represented by counsel of his choice.

On the basis of the cases he relied upon or by reference to sanctions imposable under Rule 37, Fed.R.Civ.P., Judge Weinstein was fully justified in drawing adverse inferences against Chrysler. Since Chrysler has not sought, here or below, a live hearing on any of these or other factual matters, Chrysler cannot now seek a hearing. See *Emle, supra* 478 F. 2d at 574, n. 9, and authority cited therein. Moreover, Judge Weinstein heard at length the authors of the principal affidavits on each side, Dale A. Schreiber and Robert Ehrenbard, on oral argument. Therefore, given his discretion on this motion, Judge Weinstein had ample opportunity to properly assess the key persons involved.*

Chrysler's assertion (DB26, 32) that Schreiber spent 1,000 hours on Chrysler matters is undocumented and in itself irrelevant. Since Chrysler refused to produce Schreiber's time records or any computation derived therefrom and admitted making no "detailed analysis" of them (452a), Judge Weinstein, for reasons stated above, correctly ignored this assertion. Time spent, in itself, has little meaning,** where, as here, Chrysler has not been able to show any relation, substantial or otherwise, between the matters that such time was allegedly spent on and the present case. This is understandable in view of Schreiber's undisputed statement (430a, 62a, 122a) that most of his time on Chrysler matters was spent on the *Ezzes* and *Checker* cases, which were clearly unrelated to the pres-

*Silver did request a hearing, if one were necessary (61a).

**In *Fleischer, supra*, 163 F. Supp. at 550, the former attorney whose disqualifications was sought had represented the complaining former client for over eleven years. The time spent by challenged counsel must have exceeded 1,000 hours by many times.

ent case. If time spent on work for an organization as vast as Chrysler were sufficient to warrant disqualification, the "substantial relation" test would be overruled and large corporate clients would receive the benefit of preferential rules of disqualification.

Judge Weinstein correctly held that there was no basis for imputing to Schreiber any alleged Chrysler confidences on the basis of the work he actually (or even allegedly) performed while an associate of Kelley Drye.

D. Imputation of the Alleged Knowledge of Other Kelley Drye Attorneys.

Chrysler has also contended that Schreiber's disqualification (and hence that of his firm) can be premised on the notion that Schreiber is *irrebuttably presumed* to have knowledge of alleged relevant confidential information, if any, about Chrysler that may have existed somewhere in Kelley Drye's files or in the memory of any of its partners or associates. Chrysler thus relies on a double imputation of knowledge to reach its desired result of disqualification of the Hammond & Schreiber firm: first, the asserted knowledge of Kelley Drye partners of pertinent confidences, if any, is imputed to Schreiber because he was an associate of the Kelley Drye firm; and, second, the knowledge vicariously imputed to Schreiber would be imputed to Hammond because of his partnership with Schreiber. Such a mechanical and indiscriminate imputation of confidences allegedly reposed in some Kelley Drye partner defies the reality of Schreiber's narrow, subordinate and short-term role at Kelley Drye. "Carriage of this imputation-on-an imputation to its logical terminus could lead to extreme results in no way required to maintain public confidence in the bar." *American Can Company v. Citrus Feed Co.*, 436 F. 2d 1125, 1129 (5th Cir. 1971).

Chief Judge Kaufman, in *Standard Oil, supra,* 136 F. Supp. at 364, has suggested that there is no basis for any such imputation of confidences to Schreiber in the circumstances of the present case:

> "[I]t is doubtful if the Canons of Ethics are intended to disqualify an attorney *who did not actually* come into contact with materials substantially related to the controversy at hand when he was acting as attorney for a former client now adverse to his position." (Italics added.)

Although Chrysler has portrayed Judge Weinstein as biased against its position, his opinion was far more generous to Chrysler than it needed to be. While *Standard Oil* indicates that a former partner is not presumed (rebuttably or otherwise), merely by virtue of his partnership, to have benefitted from his former firm's receipt of alleged confidences, Judge Weinstein treated Schreiber, as if he, as an associate, were rebuttably presumed to have benefitted from confidences, if any, that Kelley Drye might have received and that could be useful to the plaintiff here.* He noted (501-502a):

> "Only where an attorney himself represented a client in matters substantially related to those embraced by a subsequent case he wishes to bring against the former client, is he irrebuttably presumed to have benefitted from confidential information relevant to the current case. *See Fleischer v. A.A.P., Inc., supra,* 163 F. Supp. at 552. In such limited situations there is no necessity to demonstrate actual exposure to specific confidences which

*As stated below, Judge Weinstein also assumed, despite the lack of any showing by Chrysler, that some attorney at Kelley Drye, apart from Schreiber, handled during Schreiber's tenure some matter substantially related to the present action or that some confidences relating to such matters were reposed in Kelley Drye.

> would benefit the present client. But, as Judge Herlands noted in *Fleischer (ibid)*, in a case 'where the attorney may be "vicariously disqualified" (as by virtue of *his former membership in a law partnership*), the inference is treated as rebuttable.' • • • Judge Kaufman was subsequently to note that *Laskey* made equally clear that 'a *former partner* barred only by imputed knowledge may rebut the inference that he received confidential information from the attorney with actual knowledge.' *United States v. Standard Oil Company*, 136 F. Supp. 345, 364 (S.D.N.Y. 1955). • • • While there is some doubt whether a presumption should be applied against a challenged junior associate, • • • it has been rebutted by Schreiber." (Italics added.)

Thus, contrary to Chrysler's assertion (DB29), Judge Weinstein treated Schreiber as if he were a former partner of Kelley Drye and found nonetheless no basis for his or his firm's disqualification.

Judge Weinstein's conclusion is fully supported by *Laskey Bros. of W. Va. v. Warner Bros.*, 224 F. 2d 824 (2d Cir.), *cert. denied* 350 U. S. 932 (1955), which held that a former partner of an attorney, who was clearly disqualified, was not irrebuttably presumed to be tainted by his past partnership. As this Court stated (224 F. 2d at 827):

> "Defendants contend that either receipt of confidential information should be conclusively presumed from the fact of partnership or alternatively Malkan should at least have the burden of rebutting such an inference. Within the framework of the original partnership the fact of access to confidential information through the person of the partner with such specialized knowledge is sufficient to bar the other partners, whether or not they actually profit from such access. Such a result, although an extension of the literal wording of Canons 6 and 37 of the Canons of Professional

Ethics of the American Bar Association, is necessary to facilitate maximum disclosure of relevant facts on the part of clients. Once the partnership is dissolved, however, the inference from access to receipt of information, in a new case having no relationship to the old partnership, becomes logically less compelling and should therefore become rebuttable legally, lest the chain of disqualification become endless.

"Thus an irrebuttable inference that confidential information had been received would result in Malkan's disqualification for partnership with Isaacson, and Ellner's disqualification for partnership with Malkan. Since the degree of association to effect disqualification need not necessarily be that of a partner, young lawyers might seriously jeopardize their careers by temporary affiliation with large law firms. But even more important is the effect on litigants who may seriously feel they have claims worthy of judicial testing, but are prejudiced in securing proper representation. For the net effect of an overharsh rule of disqualification must be to hinder adequate protection of clients' interests in view of the difficulty in discovering technically trained attorneys in specialized areas who were not disqualified, due to their peripheral or temporally remote connections with attorneys for the other side. See Note, 64 Yale L. J. 917, 928."*

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*Chrysler's reliance on *Laskey* to find an irrebuttable presumption rests upon *Laskey's* holding that once one present member of an existing firm is disqualified on a matter, the disqualification spreads to all members of the firm (224 F. 2d at 826). Chief Judge Kaufman's article furnishes the factual basis for this conclusion (DB27-28). However, as shown above, this Circuit has treated the problem of the *former* member of the firm differently. *Laskey's* treatment of ex-partners has been widely accepted. *E. g., American Can Company v. Citrus Feed Co., supra*, 436 F. 2d at 1125; *Fleischer v. A.A.P., Inc., supra*, 163 F. Supp. at 552; *Standard Oil, supra*, 136 F. Supp. at 364.

In seeking disqualification of Silver's counsel through an irrebuttable presumption, Chrysler seeks not only to overrule *Laskey* but to go much further. First, Chrysler would overrule *Laskey's* holding that a mere rebuttable presumption is raised against a former partner of a disqualified attorney or firm. Second, Chrysler would attach the same irrebuttable presumption to a young former associate of a large firm. Chrysler contends (DB 7) that the remote possibility that a former associate might conceivably learn something allegedly confidential from gossip in the corridors of his former firm or from some equally fortuitous source should give rise to an irrebuttable presumption that all former associates received all confidential information existing anywhere in the firm during his tenure. Such a presumption is particularly ludicrous in the case of a large firm such as Kelley Drye and a former young associate such as Schreiber, who did some work on cases for Chrysler, the nation's fifth largest industrial corporation. Indeed, the greater possibility of transmittal of actual confidences was found not to warrant such a presumption in *Laskey*, where the challenged counsel had communicated with his former partner who was clearly disqualified because of his extensive knowledge of pertinent client confidences (224 F. 2d at 829-830). It is equally fatuous for Chrysler to argue that young associates have "access" to Chrysler confidences in Kelley Drye's vast file system. Although there may be "access" in the sense of there being no physical barriers to such materials (and this is merely an assumption), the young associate has no need or desire to review files completely unrelated to his work and, in many cases, lacks the information to identify such files.*

*Chrysler attempts to create the impression, without so stating, that Schreiber had actual knowledge of Chrysler *confidences pertinent to the present case* (DB5-8). As Judge Weinstein found (501-502a), the record does not support Chrysler's contention, either on the basis of direct or circumstantial evi-

Chrysler has not even satisfied the precondition for the imputation to Schreiber of alleged Chrysler confidences that could have been useful to the plaintiff in this case: that Kelley Drye itself had such confidences (499a). Bending over backwards to protect Chrysler's interests, Judge Weinstein assumed that Kelley Drye possessed such confidences, not merely other unrelated confidences. However, Chrysler never claimed that during such time the Kelly Drye firm played any part in the drafting, execution or use of, or in any litigation involving, the Dealer Relocation Agreement or any similar agreement that forms the basis of Silver's claim. As shown above (pp. 17-20, 23), none of the matters handled by Kelley Drye for any of the Chrysler companies during Schreiber's tenure appears to have any bearing on the narrow issues raised by the present case. Thus, there was no need for Judge Weinstein to have considered whether Schreiber was even "rebuttably" presumed to have acquired any pertinent Chrysler confidences. See *American Can Company v. Citrus Feed Co., supra,* 436 F. 2d at 1130.

This Circuit, in enforcing the Canons, has adjusted to the competing objectives expressed generally in the Code by formulating the presumptions, both rebuttable and irrebuttable, which were applied by Judge Weinstein overgenerously to Chrysler. The portion of his opinion entitled "Dangers of Unnecessary Restrictions on Young Attorneys" (502-504a) discusses some of the reasons for this Circuit's rejection of an irrebuttable presumption that former partners (to say nothing of young associates) learned of all confidences in their former firm. His con-

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(footnote continued)
dence or of the irrebuttable presumption created by the "substantial relation" test. Schreiber has categorically denied the receipt of such confidences (55a). Schreiber should not be put to an "unattainably high burden" of proving "a negative." *Laskey, supra,* 224 F. 2d at 827.

cern about the unfair, adverse impact of such an irrebuttable presumption on the former associate and persons whom he may later represent* merely echoes the concern expressed by Chief Judge Kaufman many years ago in an analogous situation:

> "If service with the government will tend to sterilize an attorney in too large an area of law for too long a time, or will prevent him from engaging in practice of the very specialty for which the government sought his service—and if that sterilization will spread to the firm with which he becomes associated—the sacrifice of entering government service will be too great for most men to make."
>
> *United States v. Standard Oil Company, supra,* 136 F. Supp. at 363.

Judge Weinstein's opinion, it is submitted, grants clients of large law firms the full protection that they need and can properly claim. Clients of large firms, especially those whose operations are run on vast institutional scales, can readily appreciate that subordinate personnel

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*Chrysler's cavalier dismissal of antitrust considerations, in terms of the general problem raised by this case, is misplaced. The application of the antitrust laws to lawyers and law firms is presently the subject of considerable debate and litigation. See *Goldfarb v. Virginia State Bar,* '74 Trade Cases, ¶75,043 (4th Cir. 1974), *rev'g in part,* 355 F. Supp. 491 (E.D.Va. 1973). The Justice Department views the issue most seriously. See remarks of Deputy Assistant Attorney General Bruce B. Wilson, 5 CCH Trade Reg. Rep., ¶50,131. Whether or not anticompetitive practices among competing lawyers are ultimately declared by the Supreme Court to be subject to the federal antitrust laws, it is quite another matter for a lawyer or a law firm to aid its clients' anticompetitive conduct—an analogy closer to the present case. Recent and powerful precedent indicates that collaboration between groups otherwise immune from the antitrust laws and those who are not eliminates immunity for all. See *United Mine Workers v. Pennington,* 381 U. S. 657, 661 (1965).

of large law firms cannot forever be wedded to their initial employer. There is no basis for the law assuming that the public is so paranoid that young associates at large firms may never be connected with counsel for adverse interests. Large institutional clients have more to lose than to gain from rules that will inhibit recruitment by large firms of young lawyers concerned about being overcommitted to their initial employers in areas of specialized legal practice. Such clients need the services of large law firms, which can operate efficiently only with large numbers of well-trained, earnest young associates, who do not feel inhibited about accepting assignments for large clients. Chrysler's position can only be seen as one that will reduce the effectiveness, influence and ethical objectivity of outside counsel.

II.

Hammond & Schreiber's representation of Silver will not create an appearance of impropriety.

While invoking the rubric of the "appearance of impropriety", Chrysler has not given the concept any content on the facts of this case. Such slogans themselves provide no guidance, since "ethical problems cannot be viewed in a vacuum". *Standard Oil, supra,* 136 F. Supp. at 363; cf. *Meyerhofer v. Empire Fire and Marine Insurance Co.,* F. 2d , Dkt. No. 73-2349 (2d Cir. 6/10/74).

Judge Weinstein quickly saw the fallacy in Chrysler's invocation of the "appearance of impropriety" rubric (502a):

> "Defendants seem to suggest that the complexities of the factual determination to be made by this court should be avoided by a decision couched in notions of possible appearance of impropriety. On the contrary, the importance of the underlying

> policy considerations called for careful analysis of the matters embraced by previous and present litigation. Vague or indefinite allegations do not suffice. Actual activities on specific cases by Schreiber must be demonstrated which would make it reasonable to infer that he gained some information about his former client of some value to his present client. The danger of damage to public confidence in the legal profession would be great if we were to allow unfounded charges of impropriety to form the sole basis for an unjust disqualification."

There is no "appearance of impropriety" arising from the fact that Hammond, prior to being joined by Schreiber, was a specialist in dealer litigation. As Chief Judge Kaufman noted:

> "With regard to the government's contention that there is an appearance of evil arising from the fact that out of 85 men in the firm of Sullivan & Cromwell, Mr. Horn is a key figure in the present suit, it must be pointed out that Mr. Horn's specialty is the field of foreign economic and legal problems. If he is not qualified to act, his firm would be disqualified regardless of his participation, under the partnership imputed knowledge theory. If he is qualified, there is no appearance of evil arising from his participation in the case rather than some other partner."
>
> (*Standard Oil, supra,* 136 F. Supp. at 366, n. 43.)

In this regard, the present case is a far weaker case for disqualification than *Standard Oil.* In *Standard Oil,* the challenged counsel was the expert, who, as a result of the changing of sides, was using his expertise against his former client. Here, the expert remained on the same side.*

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*If lurking here, any "appearance of impropriety" lies in Chrysler's obvious motive in seeking to disqualify Hammond, the expert, by virtue of his association with Schreiber, challenged counsel.

Chrysler's contention that the "appearance of impropriety" rubric "is itself grounds for disqualification" is vastly overstated (DB40). The very cases relied upon by Chrysler are merely applications of the "substantial relation" test and are factually distinguishable from the present case. In *Chugach Elec. Ass'n v. District Court*, 370 F. 2d 441 (9th Cir. 1966), a former general counsel and director of defendant—who had participated in the highest levels of policy making—was disqualified from representing a plaintiff against the defendant in an antitrust suit based on policies and conduct of defendant with which challenged counsel had become familiar while serving as general counsel and director of defendant (*Id.* at 443). Similarly, Schreiber's role at Kelley Drye, as Judge Weinstein stated (502a), "cannot be meaningfully compared" to the role of the former general counsel disqualified in *Motor Mart, Inc., v. Saab Motors, Inc.*, 359 F. Supp. 156 (S.D. N.Y. 1973),* who represented "the [objecting former] client in a broad range of activities some of them relating directly to matters embraced by the litigation in which

*Chrysler's complaint (DB33-34) that Judge Weinstein should have disregarded the actual record in the *Motor Mart* case, which was submitted by the parties (443-44a), is baseless. Judge Weinstein's review of the record showed that there was undenied and particularlized evidence that challenged counsel there had in fact "received information on defendant Saab Motors' policies, trade practices, and its methods of operation and procedure which are pertinent to and might be used in this case" (359 F. Supp. at 157). Here, by contrast, Chrysler attempts to impute to Schreiber such alleged knowledge of others by invoking various "irrebuttable presumptions." Below, Chrysler attempted to elevate, by vague characterizations, Schreiber's role to that of a general counsel, going so far as to claim, as it has not here, that he "influenced" important policies (32a). Here, Chrysler has receded from this grandiose characterization in the light of Schreiber's statement that his retroactively conceived status was neither recognized nor rewarded during his tenure at Kelley Drye (55a, 65-66a).

he was disqualified" (501-502a). In *Richardson v. Hamilton International Corporation,* 469 F. 2d 1382 (3rd Cir. 1972), challenged counsel, who was also the plaintiff in that class action, had worked on substantially related, if not identical, matters for the defendants and had interviewed at length and examined the files of the primary individual defendants on related matters (469 F. 2d at 1385). Finally, in *Emle,* challenged counsel had represented defendant in another action raising issues "that are not merely 'substantially related', but are in fact identical" (478 F. 2d at 572). These cases contrast sharply to the present case, in which there is a total lack of any "substantial relation".

The various theories of imputation of knowledge—*i.e.,* the "substantial relation" test and "rebuttable and irrebuttable presumptions"– reflect judicial concern with appearances. The application of these theories results in disqualification without a showing, and indeed in absence, of actual impropriety or an actual abuse of client confidences. If the "appearance of impropriety" were used as broadly as Chrysler urges, the qualifications placed by the decisions on imputed knowledge would be meaningless. Following existing guidelines, Judge Weinstein's decision is faithful to the Court's "responsibility to preserve a balance, delicate though it may be, between an individual's right to his own freely chosen counsel and the need to maintain the highest ethical standards of professional responsibility". *Emle, supra,* 478 F. 2d at 564-565.

Accordingly, Schreiber (and the Hammond & Schreiber firm) are qualified to act for Silver in this case.

Conclusion.

Judge Weinstein's order should be affirmed.

Dated: New York, New York
June 27, 1974

Respectfully submitted,

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Tel.: (212) 869-9696.

Of Counsel:

ALEXANDER HAMMOND
DALE A. SCHREIBER
RAYMOND A. BRAGAR

APPENDIX.

SERVICE BY DELIVERY TO INDIVIDUAL DEFENDANT

State of New York, County of ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19

at No.

deponent served the within summons and complaint on

at therein named, by delivering a true copy thereof to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.

Sworn to before me this
day of 19

SERVICE BY DELIVERY TO CORPORATE DEFENDANT

State of New York, County of ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19

at No.

deponent served the within summons and complaint on

a corporation, a defendant therein named, by delivering a true copy thereof to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be thereof.

Sworn to before me this
day of 19

Served on Myself
1 [illegible] 6/1/67

Index No.

Civil Court of the City of New York
County of New York

JAMES POLK

Plaintiff

against

CROSS & BROWN CO.

Defendant

Summons

INDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is as follows:

For a First Cause of Action plaintiff was illegally evicted by defendant or his agents from his Apt. at 952 8th Avenue, New York City, resulting in damages to the plaintiff of approximately $1,000 amount to be made more definite and certain at the trial. Demand made and refused.

For a Second Cause of Action for return of rent on Apt. No. 204 at premises 952 8th Avenue, prepaid in advance at a weekly rate of $20 from the date of the illegal eviction aforementioned herein through and including the 1st of January, 1967. Amount ot be made definite and certain at the time of trial. Demand made and duly refused.

Gerald Mann, Esq.
Mark Fresco, Esq. of counsel
Attorney(s) for Plaintiff
Post Office Address

THE LEGAL AID SOCIETY
249 Sullivan Street
New York, New York 10012
Gr. 3-1896